May 21, 1998

D.P.U./D.T.E. 96-83

Petitions of MCI Telecommunications Company, pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between MCI and New England Telephone and Telegraph Company, d/b/a Bell Atlantic.

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I. INTRODUCTION

This is an arbitration proceeding between New England Telephone and Telegraph Company d/b/a Bell Atlantic ("Bell Atlantic," previously "NYNEX") and MCI Telecommunications Corporation ("MCI") being held pursuant to the Telecommunications Act of 1996 ("the Act").[1] It is designed to resolve issues necessary to finalize an interconnection agreement ("Agreement") between the parties. These two companies have participated in a consolidated arbitration proceeding with several other competitive local exchange carriers ("CLECs") in which the Department has issued a number of arbitration awards and which is still ongoing with regard to a number of issues. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94. Late in 1996, the companies also participated in a bilateral proceeding conducted by arbitrator Paul Hartman that was designed to resolve a number of other disputes related only to their Agreement. On December 26, 1996, the Department issued an Order adopting the findings of Mr. Hartman. MCI/NYNEX Arbitration, D.P.U. 96-83 (1996). In that Order, the Department asked Bell Atlantic and MCI to prepare a final Agreement based on the arbitration awards. During the course of that effort, the companies requested another arbitration procedure to resolve disputed contract language.

For this latest arbitration, arbitrator Paul Levy conducted informational hearings on June 17, June 24, June 26, July 2, July 10, July 17, and August 21, 1977, and January 29, 1998.

[1]Pursuant to 47 U.S.C. § 252(e), a state commission to which an interconnection agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Several briefs were filed by each of the two parties during this period, and the arbitrator issued awards covering various sections of the Agreement on July 28, September 2, October 7, December 25, 1997, and February 7, 1998 ("MCI/Bell Atlantic Arbitrations Awards"). The parties were given the opportunity to file exceptions to these awards with the Department and did so on February 23, 1998. Replies to the exceptions were filed on March 10, 1998. This Order contains the Department's findings with regard to the exceptions, and also declares our adoption of the remainder of arbitrator Levy's awards.

II. STANDARD OF REVIEW

The Act provides in Section 252(c), Standards for Arbitration that "[i]n resolving by arbitration ... any open issues and imposing conditions upon the parties to the agreement, a [s]tate commission shall (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to subsection (d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement." 47 U.S.C. § 252(c). This standard ensures that new entrants can interconnect with (including collocate with) Bell Atlantic and obtain access to unbundled network elements "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" as well as resell "at wholesale rates any telecommunications service that [Bell Atlantic] provides at retail," free from "unreasonable or discriminatory conditions or limitations." 47 U.S.C. § 251(c).

According to Bell Atlantic, these arbitration proceedings represent the first time that the Department has employed an exceptions process, and therefore there is no precedent regarding the standard to be applied to the review of exceptions (Bell Atlantic Reply Brief at 1). Bell Atlantic states that the appropriate standard of review for use by the Department in considering exceptions to the arbitrator's awards is one that is based on the standard used in reviewing decisions of a hearing officer that are appealed to the full Commission (id. at 2). According to Bell Atlantic, under this standard the Department will generally reverse a decision only if the hearing officer's decision is contrary to law or was based on a misunderstanding of the facts (id., citing DLS Energy, Inc., D.P.U. 92-153-1, at 5 (1993)). Bell Atlantic argues that the standard of review for motions for reconsideration is too restrictive to be applied here[2] (id. at 1-2).

We agree with Bell Atlantic that the standard of review used by the Department to assess Motions for Reconsideration is inappropriate for our review of exceptions to the arbitrator's awards. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Phase 4-C) (1997). The standard for Motions for Reconsideration contemplates a review by the Department of a final Department decision, and the arbitrator's award is not a final Department decision. We also decline to use a standard of review employed by the courts in reviewing arbitration decisions. See G.L. c. 150C, § 11; G.L. c. 251, § 12. Where parties agree to be bound by arbitration, the scope of review by the courts is narrow. Bernard v. Hemisphere Hotel Management, Inc., 16 Mass. App. Ct. 261, review denied 390 Mass. 1102 (1983). However, the

[2]The Department will grant reconsideration of a final Department Order only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation, where a party brings to light previously unknown or undisclosed facts that would have a significant impact upon the decision in the main case, or where the Department's treatment of an issue was the result of mistake or inadvertence. Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-F at 2-3 (1998).

arbitrations at issue are statutorily imposed by the Act, and differ from those arbitrations which are the result of voluntary agreement of the parties. Here, prior to adopting the arbitrator's award in a Department Order, the parties were given the opportunity to file exceptions to the award. Because of the particular nature of this proceeding, in response to the parties' exceptions, the Department will review the arbitrator's award for errors of law or misunderstanding of fact. In addition, we will add one other category of review. In our review of specific contract language awarded by the arbitrator, there may be instances in which the drafting can be improved with no harm to either party. Accordingly, we will also grant exceptions where, in our view, there is no substantive disagreement between the parties and where a clarification of contract language better accomplishes the results intended by the arbitrator.

III. BELL ATLANTIC EXCEPTIONS

Bell Atlantic has filed only two exceptions. While Bell Atlantic indicates that it disagrees with other awards, it recognizes that there have been lengthy discussions with the parties and extensive written submissions, and states that it has an interest in bringing the arbitration expeditiously to a close. Bell Atlantic characterizes its exceptions as minor changes that may have been either overlooked by the arbitrator or unclear during the course of the arbitration (Bell Atlantic Brief at 1-2).

A. Attachment VIII, Section 2.3.1.1 -- CLASS and Custom Features

This section concerns information that Bell Atlantic will provide via an electronic interface to MCI about CLASS and Custom features. Bell Atlantic proposes to add a clause providing reference to section 1.3.1.2 that would permit it to charge MCI for reasonable costs generated in providing this capability to MCI. Bell Atlantic states that, although section 2.3.1.1 covers the question of compensation, the omission of the cross-reference in this section creates a potential ambiguity (Bell Atlantic Brief at 2-3).

Although MCI does not disagree with the substance of Bell Atlantic's arguments regarding cost recovery, it proposes a different approach to redrafting the language, and proposes two additional clarifications. Instead of referring to section 1.3.1.2, MCI's language would include the verbatim pricing language from that section as the final two sentences of this section. It suggests that this approach is less ambiguous (MCI Reply Brief at 2).

MCI also proposes to make explicit the fact that it can obtain the CLASS and Custom features information by a download method, as well as through an electronic interface. In support, it notes that Bell Atlantic was willing to provide a download as long as MCI was willing to pay the costs of doing so (MCI Reply Brief at 3-4).

Finally, MCI proposes language to make it clear that Bell Atlantic agreed to provide MCI with a list of CLASS and custom features via NXX. That concept, says MCI, was never memorialized in the contract (MCI Reply Brief at 4.)

Based on the testimony at the hearings and arguments set forth in the briefs here, we find that there is an agreement between the parties on the substance of the issues in this section. We agree that MCI's language more precisely sets forth the nature of the agreement, and we award it.

B. <u>Attachment VIII, Section 5.2.6.4 -- Rejected Data Packs</u>

This section covers the procedure to be followed when MCI finds data transmission containing calling records defective. The arbitrator concluded that Bell Atlantic should correct and retransmit the rejected data packs within 24 hours of notification by MCI. Bell Atlantic requests that the award be modified to permit it to have two business days to correct data packs. It expresses concern that it will be required to interrupt ongoing processes to meet the 24-hour period specified in the award. It provides an extensive description of why the 24-hour period would not be efficient and could potentially affect other customers (Bell Atlantic Brief at 3-4).

MCI opposes this request. It draws a distinction between the production of subscriber usage data and the transmission of the data itself. It suggests that corrections of the data itself are dealt with in other provisions of the Agreement, whereas here the issue is the transmission of the data after the billing run has been completed. Thus, says MCI, there is nothing at the transmission step in the process to interrupt, and Bell Atlantic's complaint is therefore a red herring (MCI Reply Brief at 5-6).

Bell Atlantic has presented a persuasive case for its point of view, which indicates that the arbitrator's decision was based on a misunderstanding of the facts surrounding this issue. It has explained that a multi-step method for dealing with rejected data packs -- detecting the problem, determining corrective action, changing the code, and rerunning the next cycle -- is efficient and consistent with all customers' interests. MCI has failed to establish the distinction between the production of data and the transmission of the data. We recognize that Bell Atlantic's proposal will, from time to time, create an inconvenience for MCI, but that occasional occurrence is outweighed by the efficiency and reliability concerns raised by Bell Atlantic. Accordingly, Bell Atlantic's proposed revision is awarded.

IV. MCI EXCEPTIONS

MCI takes exception to, or requests clarification of, a number of the arbitrator's awards.

A. Attachment II, Section 2.3.12 -- Migration of Calling Card Customers

This section deals with the transition of a party from Bell Atlantic calling card customer service to MCI calling card service. Bell Atlantic proposes that it should be permitted to terminate its calling card service when a customer migrates to MCI, a proposal that is not in dispute. MCI contends that the arbitrator's award does not reflect that proposal, and thus, might suggest that Bell Atlantic is left with the ability to terminate its calling card service prematurely or not to terminate it at all. MCI therefore requests language that requires Bell Atlantic to terminate its calling card service for a migrating customer upon Bell Atlantic's confirmation to MCI that the service order migrating that customer has been completed (MCI Brief at 1-2).

Bell Atlantic responds that MCI's language includes both irrelevant and improper provisions. Bell Atlantic notes that its calling card service is terminated the same time a customer terminates Bell Atlantic’s service, whether that customer is moving to another carrier or not, and whether the service offered by the other carrier has yet begun, and proposes language to that effect. Also, Bell Atlantic notes that termination of its calling card service should not be dependent on confirmation from MCI that MCI has initiated service (Bell Atlantic Reply Brief at 3-4).

We find no indication that the arbitrator has made an error of law or misunderstood the facts surrounding this issue. For the reasons stated by Bell Atlantic, we find that the language proposed by MCI represents a substantive, rather than clarifying, change in the arbitrator's award, and, as such, it is not accepted. However, Bell Atlantic's proposed language does clarify this issue, and we adopt that additional language.

B. Attachment II, Section 10.2.8 -- Access to Point of Termination

This section addresses MCI’s ability to have physical access to a point of termination ("POT") for testing, facility interconnection, and other purposes where the POT is located somewhere other than in the collocation cage at a Bell Atlantic central office. While such access is assured for collocation cages, MCI argues that the arbitrator failed to recognize that this particular circumstance where the POT is located other than in the collocation cage was not covered by other language in the Agreement. MCI has proposed two versions of language to accomplish this end (MCI Brief at 2-3).

Bell Atlantic responds that POT facilities are adjacent to the collocation cage and that, therefore, the language covering MCI's access to collocation cages includes the POT facilities. It does not, however, object to MCI's second version to clarify this point (Bell Atlantic Reply Brief at 5-6).

Because the parties agree on the substance of this issue, we accept their proposal to clarify the Agreement, and we award MCI's second version of this language.

C. Attachment VI -- Poles, Ducts, Conduits, and Rights-of-Way

Attachment VI addresses poles, ducts, conduits, and rights-of-way. This topic was covered in the original arbitration award in late 1996, but was reviewed during the more recent sessions. MCI states that the only issue before arbitrator Levy should have been whether the proposed language of MCI followed the directives and rulings of arbitrator Hartman. MCI claims that Mr. Levy's conclusions which applied the Department's policy enunciated in AT&T/NYNEX Arbitration, D.P.U. 96-80/81 (1997), were inappropriate because he permitted Bell Atlantic to litigate previously agreed upon portions of Attachment VI, and to re-litigate issues previously decided by Mr. Hartman. MCI also objects to the Department's use of the arbitration decision involving Bell Atlantic and AT&T Communications of New England ("AT&T") to decide the "entirely different circumstances" in MCI's arbitration. MCI notes that in the AT&T arbitration, there had been no prior order that resolved disputed issues, as there was in the case of MCI's arbitration (MCI Brief at 3-4).

Bell Atlantic responds that this issue was properly addressed by arbitrator Levy when he found that the AT&T award setting forth the Department's policy with regard to rights-of-way was equally applicable to the MCI interconnection agreement. Bell Atlantic argues that in the Department's approval of Mr. Hartman's arbitration award, the Department indicated that it might come to different decisions based on forthcoming arbitrations, and that in any event, Mr. Hartman indicated that the severe time pressures facing his awards precluded a full examination of all the issues at that time (Bell Atlantic Reply Brief at 5-6, citing D.P.U. 96-83, Appendix A at 21).

Because of the time pressures created by the limited statutory time period remaining before our required approval of the Hartman awards, we explicitly did not conduct an independent policy analysis of many of the issues decided in that proceeding, and reserved the right to revisit such issues as they might come before us. MCI/NYNEX Arbitration, D.P.U.

96-83, at 6. One such area included the topics in Attachment VI. These issues were, however, the focus of briefing and analysis in the AT&T/Bell Atlantic arbitration, where we announced our policy regarding rates, terms and conditions of utility attachments, stating that Bell Atlantic, as the incumbent LEC, satisfies it duties under Section 251(b)(4) of the Act by complying with the Department's regulations, and recognizing Bell Atlantic's obligation to modify its current license agreements if and when ordered to do so by the Department. See AT&T/NYNEX Arbitration, D.P.U. 96-80/81, at 10-11 (1997).

In this present case, Mr. Levy ruled:

> At the time the arbitrator issued his award last December, this statement of policy had not been issued by the Department in the arbitrations under the Telecommunications Act of 1996. Further, as noted by Bell Atlantic, the Department's adoption of the arbitrator's award at that time was simply an adoption of his findings without having the kind of detailed review made possible in the Bell Atlantic/AT&T case and in this one. Thus, [Hartman's] ruling, to the extent inconsistent with the Bell Atlantic/AT&T case, must here be modified to reflect that result. Accordingly, Bell Atlantic's language is awarded.

MCI/Bell Atlantic Arbitration Award, D.P.U. 96-83, at 2 (December 25, 1997).

We agree with and reaffirm this result. There was no error of law or misunderstanding of fact in the arbitrator's award. The award is consistent with the Department's regulations, and MCI's rights are protected under those procedures.

D. Attachment VIII, Section 6.3.1.3 -- Customer Signatures on Work Orders

MCI seeks to require Bell Atlantic to obtain a signature from a customer to verify completion of Bell Atlantic's work order. In his award, the arbitrator accepted Bell Atlantic's position that, since Bell Atlantic does not obtain such a signature for work done for its own subscribers, MCI should not be entitled to one either. Here, MCI argues that Bell Atlantic has agreed to follow this procedure in New York, and it should therefore do so in Massachusetts (MCI Reply Brief at 4).

MCI further requests that, if its proposal for customer signatures is not accepted, Bell Atlantic should be required to provide MCI access to the data contained in service technicians' portable terminals on the same terms and conditions that the information is available to Bell Atlantic (MCI Brief at 4-5). Bell Atlantic responds that it did not agree to MCI's proposed procedure in New York, that this procedure would raise a number of logistical problems, and that the issue has been dealt with in the performance standards section of the Consolidated Arbitrations (Bell Atlantic Reply Brief at 6-7).

In giving his awards, the arbitrator concluded that MCI's request would amount to a relitigation of issues already addressed in the performance standard portion of the Consolidated Arbitration. There, the Department stated that MCI and the other CLECs would have the same right and use the same procedures as Bell Atlantic to query the Bell Atlantic customer data system to determine the status of service orders. Consolidated Arbitration, 96-73/74, 75, 80/81, 83, 94, Phase 3-B, at 10 (1997). This issue was previously decided. There is no error of law or indication that there was a misunderstanding of the factual issues. Thus, the arbitrator's award stands.

E. Attachment VIII, Section 7.1.4.1.5 -- Certification of Directory Service Requests

MCI proposes that Bell Atlantic provide it with the ability to certify completed directory service requests on a per-order basis, and not on a summary basis, as stated in the arbitrator's award. MCI states that Bell Atlantic is performing this service in New York, that the same systems will be in use in the two states, and that providing this service will enable MCI to be sure that its customers' information has been accurately processed before it is placed into the white and yellow pages directories (MCI Brief at 5-8).

Bell Atlantic responds that there is no difference between providing certification of directory service requests on a summary basis or on an individual basis because Bell Atlantic can provide neither. Bell Atlantic reiterates its comments dated August 15, 1997 in which it explained that there is no system that would enable Bell Atlantic to provide such information on the thousands of updates that occur daily. Bell Atlantic states that MCI's reference to New York is misplaced, because all that was indicated in New York is that Bell Atlantic has established a process to permit periodic reports of listings in conjunction with the publishing of directories (Bell Atlantic Reply Brief at 7-8).

We find that there is no error of law. There is no indication there was a misunderstanding of facts on the part of the arbitrator, as Bell Atlantic made a clear statement of its capabilities during the proceeding, and the arbitrator ruled in accordance with the facts presented therein. Accordingly, the Department will allow the award to stand.

F. Attachment IX, Section 1 -- Physical Security

MCI proposes editing changes, which, it states, more closely reflect the intent of the arbitrator's award with regard to physical security of MCI equipment on Bell Atlantic premises, particularly equipment not located in the collocation cage (MCI Brief at 7-8). Bell Atlantic responds that there is no need to add this language in light of its agreed-upon changes for access to POT facilities (see Section IV.B, supra). Bell Atlantic suggests that the language change would be confusing, noting that it is unclear what MCI equipment would be housed in Bell Atlantic's buildings, outside of the collocation cage, since even in circumstances in which MCI provides equipment, Bell Atlantic ultimately owns and maintains all equipment not in a collocation cage (Bell Atlantic Reply Brief at 8-9).

We agree with Bell Atlantic for the reasons stated above. There is no error of law or misunderstanding of fact, and MCI's proposed language does not clarify the intent of the Agreement.

G. Attachment IX, Sections 1.1 - 1.10 -- Physical Security

MCI here, too, proposes editing changes which, it contends, better reflect the physical security goals of both companies and will better achieve a sharing of responsibility with regard to providing such security (MCI Brief at 8-13). Bell Atlantic agrees with some of these changes but not others. We explain each of MCI's proposed changes below, in the context of our discussion of Bell Atlantic's response to them.

In Section 1.1, Bell Atlantic agrees with MCI's proposal to add language restricting access by Bell Atlantic employees to MCI's collocation space, but suggests the phrase "job-related functions" rather than "specific job functions." We accept this change as clarifying the intent of the section. Bell Atlantic disagrees, however, with MCI's proposed language regarding MCI equipment not related to collocation facilities, because this part of the interconnection agreement is intended to address physical collocation (see Section IV.F) (Bell Atlantic Reply Brief at 9). We agree with Bell Atlantic that this latter change does not clarify the intent of the section. We permit the agreed-upon changes as clarifying the intent of this section, but leave the rest unchanged, as there is no error of law or indication of a misunderstanding of fact by the arbitrator.

With regard to Section 1.2, Bell Atlantic contends that MCI has attempted to inject the concept of reciprocity when requesting that Bell Atlantic identify its employees who will have access to MCI’s collocation facilities. Bell Atlantic terms this proposal "ridiculous," noting that although it is necessary for Bell Atlantic to have a list of MCI employees who visit its property, providing MCI with a list of the many Bell Atlantic employees working in its facility who might be required to enter an MCI physical collocation area is unrealistic. Bell Atlantic notes that the Agreement provides that Bell Atlantic must, in any event, maintain a log of its employees who enter MCI collocation facilities (Bell Atlantic Reply Brief at 10). Other sections of the Agreement include provisions to safeguard MCI's property. We find no error of law or misunderstanding of facts on the part of the arbitrator and find that MCI's language does not clarify the intent of the section. Therefore, no change in the award is warranted.

In discussing Section 1.3, Bell Atlantic argues that MCI has offered no rationale for its proposed change, which would eliminate a requirement that MCI's procedures and requirements for access to its equipment areas be consistent with those established by Bell Atlantic for the relevant premises. Bell Atlantic argues that this type of requirement would require it to negotiate the physical security and safety procedures separately with every carrier. Forcing it to do so, says Bell Atlantic, injects an unnecessary and inefficient procedure (Bell Atlantic Reply Brief at 10). We agree with Bell Atlantic for the reasons stated above. We find no error of law or misunderstanding of facts on the part of the arbitrator and find that MCI's language does not clarify the intent of the section. Therefore, no change in the award is warranted.

In Section 1.5, Bell Atlantic objects to two of MCI's changes. The first relates to MCI's right to change locks in its collocation space. Bell Atlantic asks that any changes to locks meet Bell Atlantic's or mutually agreed upon technical specification, and that Bell Atlantic be given keys to the new locks. Secondly, Bell Atlantic disagrees with MCI's request to remove the sentence stating that Bell Atlantic has no liability with regard to MCI's obligation to secure its collocation area, stating that the limitation of liability contained in this section is clearly intended to apply only to this circumstance (Bell Atlantic Reply Brief at 11). In light of the substantive agreement between the parties on these issues, we agree with the changes proposed by MCI as clarifying the intent of this section, with the additional clarifying language proposed by Bell Atlantic with regard to the locks. We also agree with Bell Atlantic that removal of the liability sentence is not warranted, in that it reflects no error of law or misunderstanding of fact on the part of the arbitrator and in that it does not provide clarification to the language of this section.

Finally, Bell Atlantic objects to MCI's language in Section 1.7, which would require Bell Atlantic to furnish MCI with "information concerning environmental conditions at a particular [collocation] location" and to "furnish MCI with advance notice of any changes to environmental conditions in premises housing MCI equipment." Bell Atlantic terms the requirements "amorphous" and notes that they could raise unwarranted claims of breach of the interconnection Agreement in the future. Bell Atlantic notes that the facilities that house collocation space also contain its equipment and that there is ample incentive for it to maintain the proper environment (Bell Atlantic Reply Brief at 12). We agree with Bell Atlantic that the provision proposed by

MCI is unnecessary. We find no error of law or misunderstanding of facts on the part of the arbitrator and find that MCI's language does not clarify the intent of the section. Therefore, no change in the award is warranted.

Bell Atlantic has no objection to MCI's proposed changes in Section 1.10. We accept the changes as clarifying the intent of the Agreement.

H. Attachment IX, Section 3.1 -- Revenue Protection Tools

This section describes the availability of tools that might be used by Bell Atlantic and MCI to detect and deter fraud. MCI argues that the arbitrator's award stating that the provision of such tools should be reciprocal is unlawful and contrary to the Act and rules of the Federal Communications Commissions ("FCC"). MCI states that fraud detection and deterrence tools are embedded in its network elements, and, because it interprets the Act as stating that MCI has no obligation to provide Bell Atlantic with access to the functions and features of MCI's network elements, the Department cannot require it to make those tools available to Bell Atlantic (MCI Brief at 13-14).

Bell Atlantic notes that MCI raises this legal objection for the first time here, but states that, in any event, it is not seeking access to the MCI network. Rather, Bell Atlantic states that it seeks to cooperate in the area of fraud detection and prevention, which is good business and good public policy and asks that the Department reject MCI's proposal (Bell Atlantic Reply Brief at 12-13.)

We do not accept MCI's argument that the award is unlawful. The award did not seek to make MCI's network facilities available to Bell Atlantic; rather, it sought to provide a statement of reciprocity in the detection and prevention of fraud, a goal we find to be fully consistent with the Act. Accordingly, the award stands.

With our ruling, we must address MCI's request that if we retain the requirement that access to fraud detection tools be reciprocal, we add language to reflect the fact that, while Bell Atlantic is permitted to avoid this obligation in the event such access is unlawful, the language relative to MCI's obligation contains no such similar exception (MCI Brief at 15). Because we agree that this equivalent language is an editing change that would clarify the arbitrator's intent, we also agree to require the editing change requested by MCI.

I. Attachment IX, MCI Original Sections 3.2 and 3.3 -- Financial Responsibility for Uncollectibles

MCI takes exception to the decision by Mr. Levy to strike its proposed sections 3.2 and 3.3, which are included here in their entirety:

> 3.2 Uncollectible on unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the Party having administrative control of access to said Network Element or OSS software.
>
> 3.3 [Bell Atlantic] shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop facilities from the main distribution frame up to and including the Network Interface Device, including clip-on fraud. [Bell Atlantic] shall provide soft dial tone to allow only the completion of calls to final termination points required by law.

MCI states that the arbitrator's decision indicates a misunderstanding of the range of issues involved and the history of the arbitration of the issues between the parties. MCI cites guidelines formulated by Mr. Hartman, which included the point that "liability [for fraud] rests with the provider of the faulty underlying service," as support for its position that Bell Atlantic is the party in the best position to prevent network-induced fraud. MCI says this arrangement is industry standard practice and has been endorsed by the FCC in General Plumbing Corporation v. New York Telephone and MCI Telecommunications Corporation, 11 FCC Rcd 11799 (June 20, 1996) (MCI Brief at 16-17).

MCI says that Bell Atlantic's argument has misinterpreted another of Mr. Hartman's guidelines, which stated "fraud is a cost of doing retail business, therefore the ultimate responsibility belongs [to] the provider of retail services." MCI argues that this statement did not relate to network fraud, but rather to subscription fraud. MCI also states that Bell Atlantic's argument that clip-on fraud is likely to occur on the customer's premises is disingenuous, because clip-on fraud occurs as a result of attaching to Bell Atlantic's network. Further, MCI argues that Bell Atlantic's arguments that resale costs do not include costs for uncollectible revenue is dubious. Finally, MCI disputes Bell Atlantic's contention that its approach is fully consistent with the Hartman award, where Hartman was merely suggesting possible approaches about which he had "grave reservations" (MCI Brief at 17-18).

Bell Atlantic responds that Mr. Hartman's award set forth broad guidelines, but further indicated that, if the parties could not agree to an appropriate resolution of the issue, a resolution would be imposed by the arbitration process. That, says Bell Atlantic, is precisely what occurred here, and thus there is no inconsistency between the path established in the Hartman arbitration and the ultimate resolution by Mr. Levy. Bell Atlantic then reiterates the points it made in response to MCI's arguments made during the arbitration, that the language proposed by MCI would misplace the financial responsibility for fraud, create perverse incentives, and provide potential windfalls for MCI (Bell Atlantic Reply Brief at 13-15).

Mr. Levy's arbitration award considered all of these arguments. It follows in full:

> MCI has proposed language in its Sections 3.2 and 3.3 that would make Bell Atlantic responsible for uncollectible or unbilled revenues relating to software alterations and fraudulent use of the network. MCI cites the FCC's General Plumbers case in support of its contention that this is an appropriate allocation of financial responsibility.
>
> Bell Atlantic objects to this provision, first rejecting MCI's premise that because Bell Atlantic owns it network, it can control and detect and thereby be responsible for the fraudulent use of the network. Bell Atlantic says that, in fact, MCI will have many of the tools needed to detect fraud and will, as the retail service provider, be in a better position to detect fraud. Bell Atlantic also argues that the prices it is charging MCI for resold services and UNEs do not include a provision for uncollectible revenues. Thus, says Bell Atlantic, uncollectible expenses should not be assigned to the wholesale provider. Rather they should be the responsibility of the retail provider and included in retail rates established by both parties.
>
> I do not read the General Plumbers case as supporting MCI's point. That case mainly dealt with an allocation of losses in a situation in which there was evidence that a telephone company was found not to employ sufficient fraud detection and prevention tools or systems. (New York Telephone failed to correct the breach of security that occurred on its side of the network demarcation point. General Plumbers, at paragraph 20.) Here, we are dealing with a contract that provides that such tools and systems will be in place, where, nonetheless, losses occur. In this environment, for the reasons given by Bell Atlantic, the retail service provider is in the better position to detect fraud, and the cost of fraud is appropriately placed with the retail provider. Accordingly, MCI's proposed language will be stricken.

MCI/Bell Atlantic Arbitration Award, D.P.U. 96-83, at 12 (October 7, 1997).

We conclude that the logic used by Mr. Levy was sound. Mr. Hartman reached broad conclusions that left substantial discretion in interpretation, and therefore Mr. Levy's award is not inconsistent with Mr. Hartman's award. In addition, MCI's arguments were previously considered by the arbitrator. There is no error of law or misunderstanding of the facts, and the award stands.

J. Attachment VIII, Section 6.2.1.3 and Attachment III, Sections 10.2.5., 10.6.13, and 15.2.2 -- Performance Monitoring and Alarm Data

During the arbitration, MCI had asked for "real time" access to alarm data. Rather than awarding MCI real time access, the arbitrator ruled that alarm data should be delivered to MCI contemporaneously with Bell Atlantic's delivery of the data to itself. MCI/Bell Atlantic Arbitration Award, D.P.U. 96-83, at 5-6 (July 27, 1997). He also suggested that this decision might serve to help guide other sections of the Agreement where the issue was in dispute. Id. at 5.

Here, MCI seeks to incorporate this suggestion into other sections of the Agreement, filing exceptions to the arbitrator's decision not to do so in these particular sections. In particular, MCI is asking for the following, when it is technically feasible to do so:

- In section 6.2.1.3, for contemporaneous information on potential service degradation;

- In section 10.2.5, for contemporaneous delivery of data from performance monitoring and alarm data affecting, or potentially affecting, MCI's traffic, if and when it is technically feasible to partition such data for MCI;

- In section 10.6.13, for contemporaneous delivery of data from performance monitoring and alarm data on the signals and the component of the underlying equipment to provide DCS that actually impact MCI's services, if and when it is technically feasible to partition such data for MCI;

- In section 15.2.2, for contemporaneous delivery of data on events affecting or potentially affecting MCI's traffic (MCI Brief at 19-20).

MCI argues that the arbitrator's decision not to accept these sections was predicated upon Bell Atlantic's misunderstanding of what MCI's proposed language would demand of Bell Atlantic. MCI points out that it is asking for these provisions to take effect only when they are technically feasible and when Bell Atlantic provides such interfaces to either itself, its affiliates, or its other customers. MCI argues that the provision of these features is in conformance with the overall goals of the Act because they require access to operation support systems at parity with the access Bell Atlantic provides itself (MCI Brief at 21-22). MCI further argues that providing access to Bell Atlantic's abnormal event process, as ordered by the arbitrator, is inadequate, since it provides only an after-the-fact review of network failures (id. at 23).

Bell Atlantic responds that MCI is merely attempting to again request something that is not possible, i.e., contemporaneous remote access to and delivery of performance monitoring and alarm data. Each of the provisions proposed in this section, says Bell Atlantic, would require it to have monitoring and reporting systems that neither exist nor are contemplated. It asserts that MCI's proposed inclusion of the term "when technically feasible" provides no comfort in that the provisions establish an expectation for action and a prelude for future disputes about what is technically feasible and whether Bell Atlantic is breaching the interconnection Agreement by not providing the performance monitoring and alarm data in a disaggregated basis (Bell Atlantic Reply Brief at 15-17).

We agree with Bell Atlantic. The record on these issues was fully developed by the arbitrator, and the rationale for his decision is clearly set forth in his award. MCI's exceptions provide nothing new. We find no error of law or misunderstanding of fact. In addition, the language proposed by MCI does not merely extend the arbitrator's findings to other sections; rather, it applies that language in a manner not envisioned, and, as noted by Bell Atlantic, raises the specter of unnecessary disputes and litigation with regard to the definition of technical feasibility and expectations for action. Accordingly, MCI's proposed language is not accepted, and the award stands.

V. CONCLUSION

We have reviewed the arbitrator's awards. Accordingly, we find, consistent with the above standard of review, that the Arbitrator's awards, as amended by this Order, meet the requirements of section 251, including the FCC's regulations prescribed pursuant to section 251, and we adopt the arbitrated awards in Appendix A.

VI. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth above; and it is

FURTHER ORDERED: That the parties incorporate these determinations into a final agreement, setting forth the awarded terms and conditions, and file that agreement with the Department within two weeks from the date of this Order.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner